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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,168	11/20/2003	Peter F. Symosck	H0003798 (1100.1204101)	9337

  

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HONEYWELL INTERNATIONAL INC.		
101 COLUMBIA ROAD		
P O BOX 2245		
MORRISTOWN, NJ 07962-2245		

  

EXAMINER	
GEBRESILASSIE, KIBROM K	

  

ART UNIT	PAPER NUMBER
2128	

  

MAIL DATE	DELIVERY MODE
10/03/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/718,168

Applicant(s)

SYMOSEK ET AL.

Examiner

Kibrom K. Gebresilassie

Art Unit

2128

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 7-9 and 23-32.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 09/13/2007 have been fully considered but they are not persuasive.

1. Regarding Applicant's response to 112(1):

Applicants argued that a "computer system" has sufficient support in the specification. Further, applicant's stated a "computer system" implicitly or inherently disclosed in the specification.

In response, applicants have not indicated any support for a "computer system" in the specification and therefore the rejection is maintained.

2. Regarding applicant's response to 101 rejection:

Applicants argued that a "device" is a physical component.

In response, applicants have not indicated any support in the specification whether a "device" is a physical component. During patent examination, the pending claims must have given their broadest reasonable interpretation consistent with the specification. In this case, a "device" could be software per se (See: definition for a "device" in previous Office Action mailed on July 13, 2007). Any claim that is reasonably interpreted as covering embodiments which are statutory and embodiments which are non-statutory should be rejected. Further, if there is sufficient reason to question whether a claim recites a patent eligible subject matter, it is reasonable to reject the claim under 35 USC 101. Therefore, the rejection is maintained.

3. Regarding applicants response to 103(a) rejection:

Applicants argued that the prior art does not teach "a chemical agent detection environment simulation".

In response, applicant's attention is directed to Col. 3 lines 12-15, and Col. 4 lines 44-47, which is clearly stated the objection of the invention is to provide a system and method for remote detection of hazardous clouds.

Applicants argued that Flanagan teaches away from the combination of FTIR spectrometer as taught by Wang.

In response, this analysis is incorrect. Teaching that something disadvantageous is not teaching away. These two references are clearly teaches the detection of chemical agents using different techniques. Therefore, having different techniques to solve the same problem is not teaching away. One of ordinary skill in the art that has access to the teaching of both references could use those different techniques to come up with the same final result such as detecting the chemical agents before hand.

Applicants argued that the prior art does not disclose a "simulated sensor output".

In response, a "simulated sensor output" interpreted as an "output data" (See: Applicant's specification page 8 lines 6-9), which is equivalent to "detection report" as seen in Fig. 6 of Wang et al.

Applicants argued that the prior art does not disclose a sensor response removal module.

In response, Wang et al discloses a bias removal module (See: Wang et al, Col. 13 lines 60-61; Fig. 12), which has similar function as sensor response removal module as claimed invention. .

*Handwritten signature*  
HUSKINS  
PRIMARY PATENT EXAMINER  
TECHNOLOGY CENTER 2100